IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17929 of 2005
With
SPECIAL CIVIL APPLICATION No. 18292 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

PRASHANT L.MEHTA - Respondent(s)

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Appearance :
SCA No.17929 of 2005
MR ASHISH M DAGLI for Petitioner(s) : 1,
MR KISHOR M PAUL for Respondent(s) : 1,

SCA No.18292 of 2005
MR KISHOR M PAUL for the petitioner
MR ASHISH M DAGLI for the respondent.
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 29/09/2005

ORAL JUDGMENT

These are cross petitions filed by the employer and the workman respectively challenging the same award dated

9th March 2005 passed by the Labour Court, Rajkot.

2. The facts leading to the present petitions are more or less undisputed. The workman was employed as a Conductor by the ST Corporation. He remained absent without authorized leave or prior intimation for a period from 18.8.97 to 24.9.97. A chargesheet came to be issued to him on 25th September 1997. The chargesheet was duly received by the workman on 20th October 1997. He remained present before the Inquiry Officer on 7th November 1997. Until that time, the workman had neither applied for nor was sanctioned leave. In fact, even beyond 24.9.97, i.e. the date indicated in the chargesheet, the respondent had not resumed duty. Before the Inquiry Officer, however, he submitted medical certificates from the Primary Health Center issued on 7th November 1997, indicating that he was not fit to resume duties between 19.8.97 to 18.9.97. It is the case of the workman that he received injury which prevented him from discharging his duties. He also requested for granting leave from 19.8.97 to 6.11.97. The Disciplinary Authority dismissed him from service by the order dated 21.2.98. In the said order, it was recorded that the workman has not replied to the charge-sheet. He had admitted that he was absent, but stated that on account

of having received injury on his leg, he could not report for duty. It was further observed that even after receipt of the notice to resume duty, the workman did not inform the employer about his injury or sought leave. Even after receipt of the charge-sheet, no intimation was sent to the employer about his injury. During the hearing of the departmental inquiry, certificate of being unfit for the period between 19.8.97 to 18.9.97 was produced. For the remaining period from 19.9.97 to 24.9.97, no certificate was given. Thereafter, certificate of being unfit till 6.11.97 was not produced till the date of hearing. The Disciplinary Authority, therefore, concluded that the workman remained unauthorizedly absent. It was further observed that the workman was directed to resume duty by the communication dad 22.8.97 which he received on 30th August 1997. Despite this, he never applied for leave or informed the employer about the injury nor did he produce medical certificates. Charge-sheet dated 25.9.97 was served to the workman at his residential address which he received on 20th October 1997. He has not filed any reply to the charge-sheet. He admitted before the Inquiry Officer that he produced certificate of being unfit from 19.8.97 to 18.9.97 only on 7.11.97. For the subsequent period from 19.9.97 to 24.9.97, certificate of being unfit was

not produced. It was only on 29.11.97 that he produced certificate covering the period between 19.8.97 to 6.11.97. It was observed that though such a certificate was issued on 9.11.97, the workman did not produce the same earlier. On all these grounds, the Disciplinary Authority was of the opinion that penalty of dismissal from service should be imposed on the workman.

3. The workman unsuccessfully challenged the order of penalty before the Appellate Authority. He thereafter raised industrial dispute before the Labour Court. The Labour Court by its award dated 9.3.2005 allowed the reference partially, set aside the order of dismissal, directed reinstatement of the workman with continuity and 25 per cent backwages. It is this award which has aggrieved both the employer as well as the workman.

4. Appearing for the petitioner Corporation in Special Civil Application No.17929 of 2005, learned advocate Shri Dagli submitted that in view of the proved misconduct against the respondent that he remained unauthorizedly absent, the order passed by the Disciplinary Authority ought not to have been interfered with by the Labour Court. That in any case, grant of backwages was not proper. Reliance was placed on a decision of the learned

single Judge of this Court in the case of Gujarat State Road Transport Corporation v. Chimanlal R. Vaghri, 2002 (3) GLH 29 wherein the learned Judge had upheld the order of dismissal imposed by the employer for unauthorised absence of the employee.

5. Appearing for the workman who is the petitioner in Special Civil Application No.18292 of 2005, learned advocate Shri Paul submitted that the authorities gravely erred in imposing the extreme penalty of dismissal from service. He submitted that though the workman had remained absent unauthorizedly, he had valid reasons for not discharging his duties. He had produced medical certificates before the Inquiry Officer. His injury was never disbelieved by the employer. He, therefore, contended that the dismissal ought not to have been resorted to. He submitted that the Labour Court was justified in setting aside the order of dismissal, but erred in awarding only 25 per cent backwages. He, in fact, requested that the amount of backwages be increased to full backwages by providing for some minor punishment in substitution.

6. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of G.T.Lad v. Chemicals &

Fibres of India Ltd. 1979(38) FLR 95. In the decision, however, the Hon'ble Supreme Court found that the theory of the employer of abandonment of service by the workman is not acceptable. It was in that background that the Hon'ble Supreme Court provided for reinstatement with 75 per cent backwages. For apparent reasons the ratio laid down therein has no application in the present case.

6.1 Reliance was also placed on the decision of the learned single Judge of this Court in the case of Veterinary Officer v. R.R.Jhala, 1998 (1) GLR 110. In the said decision, while finding that the retrenchment of the employee was invalid, he was held entitled to full backwages observing that backwages is the rule and denial is an exception. In the present case, this Court is concerned with the question of dismissal of the workman from service pursuant to a departmental inquiry and it is not a case of retrenchment. The said decision also, therefore, would not apply to the facts of the present case.

7. From the above recording of facts, it can be seen that admittedly, the workman had remained unauthorizedly absent for an extended period. Though in the chargesheet the period of absence was indicated as

between 18.8.97 to 24.9.97 even after issuance of chargesheet and service thereof on the workman, he had not resumed duty right till 7.11.97. It is not disputed that during the entire period the workman neither informed the employer about his inability to resume duty nor did he send medical certificates for the injury which according to him prevented from discharging his duties. The fact that unauthorised absence without prior sanction of leave or even without intimation was thus proved beyond doubt. Even before the Inquiry Officer, during the pendency of the disciplinary proceedings, the workman did not produce necessary medical certificates timely. The certificates were produced on different dates covering different periods. All throughout, therefore, the workman had shown negligence in not informing the employer about his absence and the reasons thereof. One cannot lose sight of the fact that the respondent workman was engaged as a conductor by the ST Corporation. His sudden disappearance from service without intimation even if it was due to his receiving injury cannot be pardoned. The Disciplinary Authority held the charges against the respondent proved. However, at no stage, the employer has concluded that the respondent had not received injury or that the injury was not sufficient to prevent him from discharging his duties. In that view of the

matter, though the respondent was guilty of remaining absent unauthorizedly, his absence was not totally unjustified. In this view of the matter, taking an extreme step of dismissing the workman from service was certainly not justified. In any view of the matter, punishment of dismissal from service was grossly disproportionate, harsh and not commensurate with the proved charges. Insofar as the award of the Labour Court striking down the dismissal is concerned, I find no reason to interfere with the same. The subsidiary question is about the punishment which the workman should be made to undergo.

8. I am unable to accept the submission of learned advocate Shri Paul appearing for the workman that the workman should be awarded full or substantial backwages though he had not discharged his duties. It is true that the order of dismissal is set aside but the same is not on account of the same being found illegal or for any other reason except this Court finding that the dismissal was harsh and excessive. For the proved misconduct, the respondent cannot escape without any punishment. The award of backwages would be rewarding the workman for having committed misconduct. One cannot also lose sight of the fact that earlier on two occasions, the respondent

had committed misconduct of remaining unauthorizedly absent. In fact for one such misconduct, he was initially dismissed from service but later on reinducted. From the default card made available to the Court by the learned advocate for the ST Corporation,this facts are emerging. Therefore, under no circumstances, I am able to persuade myself to adopt such a course of action. Considering the facts and circumstances, providing for correct balance, I find that not granting any backwages would be a sufficient punishment to the workman.

9. In the result, while upholding the award of the Labour Court insofar as the striking down the dismissal, direction for payment of backwages is set aside. It is clarified that the workman shall be deemed to be in continuous service for all other purposes except backwages. With these directions, the petitions are disposed of. Rule in Special Civil Application No.17929 of 2005 is made absolute to the limited extent as stated above. Special Civil Application No.18292 of 2005 is rejected.

(Akil Kureshi, J.)

(vjn)